

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 120425-U

NO. 4-12-0425

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 31, 2013

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
LOUIE R. WARD,	)	No. 11CF585
Defendant-Appellant.	)	
	)	Honorable
	)	Jeffrey B. Ford,
	)	Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Appleton and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) Defendant is statutorily entitled to (a) three additional days of credit toward defendant's sentence and (b) \$15 credit toward his applicable fines.

(2) The trial court did not abuse its discretion in denying defendant sentence credit for time spent in residential substance abuse treatment.

¶ 2 In June 2011, defendant, Louie R. Ward, was sentenced to 30 months' drug court probation for theft with a prior theft conviction (720 ILCS 5/16-1(a)(1)(A) (West 2010)) pursuant to an open guilty plea. In February 2012, the State filed a petition to revoke defendant's probation, alleging he committed a new retail theft. Defendant admitted the allegations in the State's petition. In March 2012, the trial court sentenced defendant to 66 months' imprisonment, ordered him to pay all previously ordered costs, and awarded credit for 154 days served.

¶ 3 In April 2012, defendant filed a motion to reconsider his sentence and for

additional sentencing credit for time spent in residential treatment. In May 2012, the trial court denied the motion.

¶ 4 On appeal, defendant asserts he is entitled to (1) three additional days of credit against his sentence and \$15 credit against his fines for time spent in pretrial custody and (2) 88 days of credit for time spent in custody at two residential treatment facilities. The State concedes defendant is entitled to three additional days of sentence credit and \$15 credit against his fines for time spent in pretrial custody but contends the trial court did not abuse its discretion in denying sentence credit for time defendant spent in residential treatment facilities. We agree with the State. We affirm in part and remand with directions.

¶ 5 I. BACKGROUND

¶ 6 In April 2011, defendant was charged by information with one count of theft with a prior theft conviction (720 ILCS 5/16-1(a)(1)(A) (West 2010)), and one count of obstructing justice (720 ILCS 5/31-4(a) (West 2010)). In May 2011, defendant entered an open guilty plea to the theft charge and the State dismissed the obstruction charge. In June 2011, the trial court sentenced defendant to 30 months' drug court probation and ordered defendant to participate in any recommended drug treatment programs.

¶ 7 In February 2012, the State filed a motion to revoke defendant's probation based on the allegation he committed a new offense of retail theft. That same month, defendant admitted the allegation in the State's petition to revoke. After the trial court properly admonished defendant and received the State's factual basis, the court accepted defendant's admission. In March 2012, the court sentenced defendant to 66 months' imprisonment, ordered him to pay all previously ordered costs, and gave defendant credit for 154 days previously served.

¶ 8 In April 2012, defendant *pro se* filed a motion to reduce his sentence and a motion for order *nunc pro tunc*. The public defender's office was appointed to represent defendant on the motions and was given 30 days to file any amended motion. Shortly thereafter, defense counsel filed a motion for reconsideration of sentence and for additional sentencing credit, seeking credit for 88 days defendant spent in residential treatment. In May 2012, the trial court denied defense counsel's motion.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant asserts he is entitled to (1) three additional days of credit against his sentence and \$15 credit against his fines for time spent in pretrial custody and (2) 88 days of credit for time spent in custody at two residential treatment facilities. The State concedes defendant is entitled to three additional days of sentence credit and \$15 credit against his fines for time spent in pretrial custody but contends the trial court did not abuse its discretion in denying sentence credit for time defendant spent in residential treatment facilities. We agree with the State. We affirm in part and remand with directions.

¶ 12 A. Statutory Credits

¶ 13 Defendant asserts he is entitled to three additional days of credit against his sentence and \$15 credit against his fines for time spent in pretrial custody. The State concedes defendant is entitled to such credit. We accept the State's concession.

¶ 14 We review *de novo* whether a defendant is entitled to additional credit for time spent in pretrial custody. *People v. McCreary*, 393 Ill. App. 3d 402, 408, 915 N.E.2d 745, 749-750 (2009).

¶ 15 A defendant is entitled to one day of credit against his sentence for every day, or portion thereof, spent in pretrial custody. *People v. Ligons*, 325 Ill. App. 3d 753, 759, 759 N.E.2d 169, 174 (2001). A defendant is also entitled to a \$5 credit per day for time spent in pretrial custody to be applied against any fine imposed. *People v. Hare*, 119 Ill. 2d 441, 452, 519 N.E.2d 879, 883 (1988); 725 ILCS 5/110-14(a) (West 2010). Absent a statutory precondition, a defendant does not forfeit his right to sentence credit by failing to request the credit in the trial court. *People v. Dieu*, 298 Ill. App. 3d 245, 249, 698 N.E.2d 663, 666 (1998).

¶ 16 In this case, the trial court awarded defendant 154 days credit toward his sentence. However, our review of the record reveals defendant was incarcerated in the county jail for 157 days before the day of sentencing (April 11, 2011, through July 27, 2011; October 24, 2011, through October 26, 2011; January 12, 2012, through January 23, 2012; and February 6, 2012, through March 12, 2012). The court's sentence credit calculation properly excluded July 27, 2011 (the date defendant was sent to residential treatment), and March 12, 2012 (the day of sentencing). Thus, defendant is entitled to three additional days of credit toward his sentence and \$15 toward his applicable fines.

¶ 17 We remand for issuance of an amended sentencing judgment to reflect these credits.

¶ 18 B. Residential Treatment Custody

¶ 19 Defendant also contends the trial court abused its discretion when it denied him 88 days of credit for time spent in custody at two residential treatment facilities. However, a review of defendant's brief reveals defendant's actual argument is the court did not have discretion to deny defendant credit for time in treatment.

¶ 20 A trial court's sentencing decisions are entitled to great deference and will be disturbed only when the court abused its discretion. *People v. Streit*, 142 Ill. 2d 13, 18-19, 566 N.E.2d 1351, 1353 (1991). However, questions regarding the scope and application of a statute are reviewed *de novo*. *People v. Evans*, 391 Ill. App. 3d 470, 472, 907 N.E.2d 935, 937 (2009).

¶ 21 Section 5-4.5-100(b) of the Unified Code of Corrections (Unified Code) provides, in part, as follows:

"[T]he offender shall be given credit on the determinate sentence or maximum term and the minimum period of imprisonment for time spent in custody as a result of the offense for which the sentence was imposed \*\*\*. \*\*\* [T]he trial court *may* give credit to the defendant for time spent \*\*\* confined for psychiatric or substance abuse treatment prior to judgment, if the court finds that the detention or confinement was custodial." (Emphasis added.) 730 ILCS 5/5-4.5-100(b) (West 2010).

When construing a statute, a court's primary objective is to ascertain and give effect to the intent of the legislature. *People v. Molnar*, 222 Ill. 2d 495, 518, 857 N.E.2d 209, 222 (2006). Where the language of a statute is clear and unambiguous, courts apply its plain and ordinary meaning. Generally, the use of the term "may" by the legislature is intended to be permissive in nature, whereas the use of the word "shall" is mandatory. *People v. Reed*, 177 Ill. 2d 389, 393, 686 N.E.2d 584, 586 (1997). Thus, the provision that a trial court *may* give credit "lies within the trial court's sound discretion." *People v. Witte*, 317 Ill. App. 3d 959, 965, 740 N.E.2d 834, 839 (2000).

¶ 22 In this case, the State agrees that defendant's time spent in residential treatment was custodial. Thus, the only issue is whether the trial court had discretion and, if so, whether it abused its discretion by denying sentence credit for that time.

¶ 23 Defendant cites *In re Christopher P.*, 2012 IL App (4th) 100902, 976 N.E.2d 1095, for the proposition that he is entitled to sentence credit for time spent in residential treatment. In *Christopher P.*, the juvenile respondent was ordered to complete a juvenile detention center treatment program under section 5-715(2)(e) of the Juvenile Court Act of 1987 (705 ILCS 405/5-715(2)(e) (West 2008)) as a condition of his probation. *Christopher P.*, 2012 IL App (4th) 100902, ¶ 6, 976 N.E.2d 1095. The treatment program was a "behavior modification program" designed 'towards helping [residents] avoid future trouble with the law.' " *Id.* ¶ 11, 976 N.E.2d 1095. The trial court denied the respondent's request for 117 days' sentence credit for time spent in the treatment program and he appealed. *Id.* ¶ 1, 976 N.E.2d 1095. On appeal, the respondent asserted, in relevant part, that he was entitled to sentencing credit for time spent in the treatment program because he was in "custody" for sentencing credit purposes. *Id.* ¶ 2, 976 N.E.2d 1095. This court agreed, and awarded the respondent sentence credit for time spent in the treatment program.

¶ 24 In *In re Darius L.*, 2012 IL App (4th) 120035, 976 N.E.2d 1109 (a case cited by defendant to support his proposition that he was in custody), this court again addressed the issue of whether the juvenile respondent was entitled to sentence credit for time spent in the same treatment program at issue in *Christopher P.* Again, we concluded the respondent was in custody and therefore entitled to credit for time spent in the treatment program. However, in so holding, this court noted, "The permissive language of section 5-4.5-100(b) of the Unified Code

refers to 'psychiatric or substance abuse treatment.' " *Darius L.*, 2012 IL App (4th) 120035, ¶ 43, 976 N.E.2d 1109. We found that the treatment program at issue was not a substance abuse treatment program and, thus, the permissive language of section 5-4.5-100(b) did not apply. *Id.*

¶ 25 Unlike *Christopher P.* and *Darius L.*, in this case defendant was in a substance abuse treatment center. Accordingly, the permissive language of section 5-4.5-100(b) of the Unified Code does apply—the trial court had discretion. Thus, we must determine whether the court abused its discretion in denying defendant credit for time served in the two residential treatment programs.

¶ 26 During the hearing on defendant's motion for reconsideration of sentence and for additional jail credit, the court noted as follows:

"[Defendant] has been involved with the criminal justice system  
for 30 years. \*\*\*

This is a theft with a prior theft. He was given probation in  
this matter pursuant to drug court. He was given the chance to  
show that he was going to change.

He was in residential treatment. He messed up. He was  
sent to long-term residential treatment. He messed up. He was  
put—again, given the chance to go into treatment again, which is  
when he stole again.

So, all these terms in treatment that he was given didn't  
change any behavior because he was still stealing \*\*\*.

\* \* \*

It would appear that the Defendant is asking for credit for time served for the time he spent in residential treatment while on probation.

It's clear, though, that he didn't get any benefit out of that residential treatment. Although, I believe that I do have the power to give him credit for that when he was just wasting everybody's time and money and not doing the things that he needed to do, not rehabilitating at all, it would seem incongruous to be able to provide him with credit on his sentence for wasting time and everybody's money."

¶ 27 The record is clear that the trial court recognized it had discretion to award sentence credit for the time defendant spent in residential treatment, but it exercised its discretion not to award credit based on defendant's prior criminal history and failure to take advantage of the substance abuse treatment he received. We find no abuse of discretion.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm in part and remand with directions for issuance of an amended written sentencing judgment reflecting (1) three additional days of credit toward defendant's sentence and (2) \$15 credit toward his applicable fines. As part of our judgment, since the State successfully defended a portion of this appeal, we award the State its \$50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 30 Affirmed as modified; cause remanded with directions.